

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ROBERT L. COLLINS-BEY,

Petitioner,

v.

ORDER

05-C-453-C

MATTHEW J. FRANK, RICHARD SCHNEITER,  
PETER HUIBREGTSE, GARY BOUGHTON,  
KELLY TRUMM, TODD BRUDOS,  
REED TREFZ and CHAD LOMAN,

Respondents.  
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On September 2, 2005, I denied petitioner Robert L. Collins-bey's request for leave to proceed against respondents in this case. Now petitioner has filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. Petitioner's motion is primarily re-argument of the claims he raised in his original complaint. I need not repeat here the reasoning for my decision, which was fully explained in the September 2 order. I will comment, however, on several concerns petitioner has expressed.

First, petitioner accuses the court of "reconfiguring" his complaint to unfairly omit facts he believed were relevant to the legal arguments he advanced. It is the duty of this court to "liberally construe" the pleadings of pro se litigants. Haines v. Kerner, 404 U.S.

519, 521 (1972). In doing so in this case, I looked at all the facts pleaded by petitioner and at the legal claims made, as well as the legal claims that could reasonably be inferred from the facts provided. Although petitioner raised what he believed to be three claims, I was able to discern four additional theories on which petitioner may have wished to proceed. Unfortunately for petitioner, none of those theories had legal merit; the facts petitioner provided in his complaint were insufficient to entitle him to relief under existing law.

Second, petitioner challenges the court's failure to address in detail his allegations that defendants violated state law. Among these allegations are claims that prison officials failed to follow a policy detailing when the "back of cell" procedure should be used, placed petitioner in segregation for failing to follow an order to turn on his cell light and "exceeded their legislative authority" by ordering a "staff-assisted strip search." Prisoners are entitled to be free from arbitrary actions of prison officials that affect their constitutionally protected interests. Caldwell v. Miller, 790 F.2d 589, 611 (7th Cir. 1986). However, as I explained in the September 2 order, petitioner has not stated a claim that his constitutional rights were violated. Therefore, if he has a claim regarding defendants' alleged violations, it arises under state, not federal, law.

28 U.S.C. § 1367(a) provides in relevant part:

[I]n any civil action of which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

The existence of supplemental jurisdiction is predicated on the existence of a substantial federal claim. Mine Workers v. Gibbs, 383 U.S. 715 (1966). Petitioner was not granted leave to proceed in forma pauperis on his claims arising under federal law. Therefore, I declined to exercise pendent jurisdiction over any of petitioner's claims under state law. Khan v. State Oil Co., 93 F.3d 1358, 1366 (7th Cir. 1996) (relinquishing jurisdiction over state law claims is preferred course to avoid federal intrusion into areas of purely state law) vacated on other grounds, 522 U.S. 156, 173 (1997).

Finally, petitioner challenges the court's dismissal of respondents Trumm and Huibregtse from the lawsuit. The inclusion of these respondents would make no difference in the outcome of petitioner's case. Therefore, I need not address whether it was appropriate

to grant them absolute immunity in the screening order.

ORDER

IT IS ORDERED that petitioner's motion pursuant to Fed. R. Civ. P. 59 to alter or amend the opinion issued in this case on September 2, 2005, is DENIED.

Entered this 26th day of September, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge